

WAC 296-19A-010 Definitions. (1) What does it mean to say an injured worker is employable?

(a) "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:

- (i) Age, education, and experience;
- (ii) Preexisting physical and mental limitations; and
- (iii) Physical and mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.

(b) Physical and/or mental conditions that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial injury/occupational disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

(c) If there are no physical or mental (~~limitations~~) restrictions caused by the worker's industrial injury/occupational disease, the worker must be found employable under the Industrial Insurance Act.

(2) What are vocational rehabilitation services? Vocational rehabilitation services are those provided by a vocational rehabilitation provider and include, but are not limited to, the following:

- (a) Gathering industrially injured or ill workers' work and/or education histories and physical capacities information;
- (b) Assessing industrially injured or ill workers' employability;
- (c) Developing, documenting, and writing vocational rehabilitation plans;
- (d) Monitoring injured workers' progress during training;
- (e) Writing progress reports;
- (f) Analyzing and documenting the transferable skills of the injured worker and writing transferable skills analyses;
- (g) Performing occupational research;
- (h) Conducting labor market surveys and writing labor market survey reports;
- (i) Conducting and writing job analyses;
- (j) Communicating with industrially injured or ill workers, employers, physicians and others;
- (k) Developing job modifications and work site modifications, as well as prejob accommodations, and writing reports for this work; and
- (l) All work done to obtain any job with any employer for injured workers referred for vocational rehabilitation services.

(3) What is a vocational rehabilitation provider (provider)? A provider is any person, firm, partnership, corporation, or other legal entity that provides vocational rehabilitation services to industrially injured or ill workers, pursuant to RCW 51.32.095. A provider must meet the qualifications listed in WAC 296-19A-210.

(4) What is an injured worker's labor market? Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance and be consistent with the industrially injured or ill worker's physical and mental capacities. The exceptions to this rule are listed in the table below:

When a worker:	Then the department:
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<p>! Relocates to a labor market other than at the time of injury and</p> <p>! Returns to work and</p> <p>! Suffers an aggravation of the work-related condition.</p>	<p>Uses the labor market where the industrially injured or ill worker worked at the time of the aggravation. This applies whether the department closed and reopened the claim or whether the claim remained open during the period of aggravation.</p>
<p>! Relocates after the industrial injury/illness or aggravation and</p> <p>! Now lives in a labor market with more employment opportunities than where the industrially injured or ill worker worked at the time of injury.</p>	<p>Uses the industrially injured or ill worker's current labor market. For example, an industrially injured or ill worker was injured in Forks but after the injury, moves to Tacoma. Provider would use Tacoma as the industrially injured or ill worker's labor market.</p>
<p>! Relocates to a labor market other than at the time of injury or onset of illness and</p> <p>! The ((industrially injured or occupational disease was a proximate cause of the)) move was <u>proximately caused by the medical condition arising from the occupational injury or disease.</u></p>	<p>Uses the injured or ill worker's current labor market. For example, an industrially injured or ill worker moves to a drier climate due to an accepted asthma condition. Provider would use the labor market in the drier climate.</p>

(5) **What is a labor market survey (LMS)?** It is a survey of employers in an industrially injured or ill worker's labor market to obtain specific information (such as physical demands and qualifications) related to job possibilities.

(6) **What is a job analysis (JA)?** It is the gathering, evaluating, and recording of accurate, objective data about the characteristics of a particular job.

(7) **What is a transferable skill?** Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.

(8) **What is a transferable skills analysis?** It is a systematic study of the transferable skill or skills a worker has demonstrated to see if that skill set makes him/her employable.

(9) **What are job modifications?** Job modifications are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of job modification benefits is to encourage employers to modify jobs to retain or hire injured workers. Job modifications are used when an employer-employee relationship exists, and they may include worksite adjustment; job restructuring; and/or tools, equipment or appliances.

(10) **What are prejob accommodations?** Prejob accommodations are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of prejob accommodation benefits is to make it possible for the worker to perform the essential functions of a job. Accommodations are used when an industrially injured or ill worker is engaged in a vocational rehabilitation plan or in a job search, and they may include tools, equipment or appliances.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-020 When may the department offer vocational rehabilitation services? The department may, at its sole discretion, authorize vocational rehabilitation services that are necessary and likely to make the worker employable. ~~((In exercising its discretion the department considers, but is not limited to:~~

- ~~(1) Whether the worker took advantage of and utilized vocational rehabilitation services offered in this or other claims;~~
- ~~(2) The worker's ability and willingness to participate in and benefit from vocational rehabilitation services; and~~
- ~~(3) The likelihood that the worker will be employable after the vocational rehabilitation services are completed.))~~

NEW SECTION

WAC 296-19A-025 What information does the department consider when exercising discretion? In exercising its discretion the department considers, but is not limited to:

- (1) Whether the worker took advantage of and utilized vocational rehabilitation services offered in this or other claims;
- (2) The worker's ability and willingness to participate in and benefit from vocational rehabilitation services; and
- (3) The likelihood that the worker will be employable after the vocational rehabilitation services are completed.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-030 What are the responsibilities of the parties? All parties will have the following responsibilities in assisting the injured worker to become employable at gainful employment:

- (1) The attending physician shall maintain open communication with the industrially injured or ill worker's assigned vocational rehabilitation counselor and the referral source. The attending physician shall respond to any requests for information in a timely fashion and will do all that is possible to expedite the vocational rehabilitation process, including making an estimate of the worker's physical or mental capacities that affect the

worker's employability.

(2) The claims unit within the department shall(~~(+ (a))~~) notify the employer of the referral to a vocational rehabilitation provider(~~(+ (b) Send the employer a copy of the closing report; and (c) Give written notice to an injured worker if a complaint of noncooperation has been made))~~).

(3) The employer shall assist the vocational rehabilitation counselor in any way necessary to collect data regarding the former gainful employment of the injured worker. Further, the employer will assist the vocational rehabilitation counselor and attending physician to determine whether or not a modified job could be made available for employment of the injured worker.

(4) The injured worker shall cooperate with all reasonable requests from all responsible individuals in determining disability, developing and implementing the rehabilitation process. Should the injured worker fail to be cooperative, the sanctions as set out in RCW 51.32.110 shall be applied.

(5) In assisting the injured worker to become employable at gainful employment, the provider is to follow the priorities as set out in RCW 51.32.095 and the requirements as set out in this chapter.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-040 What vocational rehabilitation services require authorization? All vocational rehabilitation services must be preauthorized. The department may make one or more of the following type of referrals: Early intervention; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; (~~(ex))~~ forensic services or stand alone job analysis. Each referral is a separate authorization for vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-060 What reports does the department require when early intervention services are provided at its request? (1) Progress reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty days from the date of the referral summarizing progress during the most recent reporting period. The progress report must include the following:

(a) Summarized results of all contacts the provider had with the industrially injured or ill worker, employer of injury or current employer, and medical provider(s);

(b) Summary of all actions taken including progress on previously recommended actions;

(c) Identification and analysis of any barriers preventing completion of the referral; and

(d) Description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

(2) Closing reports. The provider must always submit an early intervention closing report at the conclusion of services. In the report the

provider must include or address:

(a) A brief description of the industrially injured or ill worker's work history((+));

(b) Summary of the industrially injured or ill worker's education, training, licenses, and certificates;

(c) A medically reviewed job analysis for the job of injury and any other return to work options;

(d) Description of the worker's medical status and physical capacities;

~~(e) ((The date the worker returned to work and the monthly salary or wage, or document attempts to obtain this information;~~

~~(f) Indication of which return to work priority relates to the situation;~~

~~(g) Documentation that no return to work options exist with the employer of injury or current employer, if applicable;~~

~~(h) Any other supporting documentation.))~~ Indication of which return to work priority relates to the situation;

(f) Any other supporting documentation;

(g) The date the worker returned to work and the monthly salary or wage, or document attempts to obtain this information, if applicable;

(h) Documentation that no return to work options exist with the employer of injury or current employer, if applicable.

(3) The provider must notify the department orally and in writing within two working days after learning of an unsuccessful return to work by the injured worker.

(4) The provider must notify the department orally and in writing within two working days after learning of a return to work by the injured worker.

NEW SECTION

WAC 296-19A-065 What are ability to work assessment (AWA) services?

AWA services are used by the department to determine if an industrially injured or ill worker should receive vocational rehabilitation plan development services. AWA services may include, but are not limited to, the following:

(1) Performing job analyses;

(2) Conducting labor market surveys;

(3) Assessing transferable skills;

(4) Obtaining work restrictions;

(5) Evaluating the injured worker's ability to work at the job of injury or any other job;

(6) Coordinating with medical providers to obtain physical capacities and restriction information and a release to participate in vocational rehabilitation plan development services;

(7) With authorization from the department, vocational testing may be used to evaluate the industrially injured or ill worker's ability to benefit from vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-070 What is an ability to work assessment? (1) ~~((An AWA is a written report used by the department to determine if an industrially injured or ill worker should receive vocational rehabilitation services.))~~
The AWA report must include an evaluation of the industrially injured or ill worker's:

- (a) Age, education and experience;
- (b) Transferable skills;
- (c) Preexisting physical and mental conditions and the effect of those conditions on the worker's employability;
- (d) Physical and mental conditions proximately caused by the worker's industrial injury or occupational disease and the effect of those conditions on the worker's employability;
- (e) Wage at the time of injury;
- (f) Work pattern;
- (g) Significant barriers to employment;
- (h) Labor market; and
- (i) Complete work history, in addition to information about education level, courses or transcripts, licenses, certifications or registrations that the worker may have obtained in the past.

(2) The AWA must also include one of the following recommendations:

(a) Able to work: The injured worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, ~~((the))~~ a list of job ~~((possibility(ies)))~~ possibilities for which the worker is qualified;

(ii) A medically approved job analysis. When this is not obtainable or physical capacities information ~~((when a JA is not possible))~~ regarding the worker's ability to perform the job may be used; and

(iii) Labor market information supporting the provider's recommendation. Labor market information is not necessary when ~~((not returning to the employer of injury or current employer))~~ the injured worker is medically released to work for their job of injury at their previous work pattern;

(b) Further services appropriate: Vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment. The report must include:

(i) An analysis demonstrating ~~((why the worker is unlikely to return to work without vocational rehabilitation services))~~ how vocational rehabilitation plan development services are necessary and likely to enable the injured worker to become employable at gainful employment;

(ii) The specific return to work possibilities investigated and the reasons why they were ruled out including labor market information when necessary; or

(c) Further services not appropriate: The injured worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) ~~((Any))~~ Identifying barriers that will ~~((interfere with the worker's return to work or))~~ make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

(iii) ~~((If appropriate))~~ Medical, labor market, and/or other information, as necessary, supporting the provider's recommendations.

(d) Return to work: The injured worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work;

(iv) The worker's monthly wages.

~~(3) ((The provider must notify the department in writing within two working days if the worker is medically released to work without restrictions.))~~ The provider must immediately inform the department orally if the worker is medically released without restrictions or has returned to work and must follow the oral notification with written notification within two working days. The provider must attach documentation showing the worker was medically released to work without restrictions. Except for completing the closing report, the provider should not perform any other work on the AWA without the prior authorization of the referral source.

~~((4) The provider must notify the department orally and in writing within two working days if the worker has returned to work. This report must specify and/or document attempts to obtain the following information:~~

~~(a) A description of the job the worker returned to;~~

~~(b) The name of the employer;~~

~~(c) The date that the worker returned to work;~~

~~(d) The worker's monthly wages.))~~

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-090 What are vocational rehabilitation plan development services? Vocational rehabilitation plan development services are authorized to obtain the vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for an industrially injured or ill worker. The provider will work with the industrially injured or ill worker in the development of the plan. Covered services include, but are not limited to, the following:

(1) Vocational counseling and occupational exploration;

(2) Identifying job goal, training needs, resources, and expenses;

(3) Vocational rehabilitation plan development services are authorized for the vocational rehabilitation provider to produce a recommended vocational rehabilitation plan for an industrially injured or ill worker.

(4) Coordinating with medical providers to obtain physical capacities and restrictions information and a release to participate in a vocational rehabilitation plan; and

~~((4))~~ (5) Vocational testing.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-100 What reports does the department require when vocational rehabilitation plan development services are provided at its request? (1) Progress reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty days from the date of the referral summarizing progress during the most recent reporting period. The progress report must include the following:

(a) Description of the return to work goals explored, accepted or ruled out;

(b) Review of the return to work priorities being addressed;

(c) Summary of all actions taken, including progress on previously recommended actions;

(d) Identification and analysis of any barriers preventing completion of the referral; and

(e) Description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

(2) Vocational rehabilitation plan. The provider must address the return to work priorities listed in RCW 51.32.095(2) in the plan and explain why each preceding priority would not help the industrially injured or ill worker return to work. The vocational plan must also include the following information:

(a) An assessment of the industrially injured or ill worker's skills and abilities considering the industrially injured or ill worker's physical capacities and mental status, aptitudes and transferable skills gained through prior work experience, education, training and avocation;

(b) The services necessary to enable the industrially injured or ill worker to become employable in the labor market;

(c) Labor market survey supportive of the industrially injured or ill worker's employability upon plan completion;

(d) Documentation of the time and costs required for completion of the plan;

(e) A direct comparison of the industrially injured or ill worker's skills, both existing and those to be acquired through the plan, with potential types of employment to demonstrate a likelihood of plan success;

(f) A medically approved job analysis for the proposed retraining job goal;

(g) Any other information that may significantly affect the plan; and

(h) An agreement signed by the provider and industrially injured or ill worker that:

(i) Acknowledges that the provider and the industrially injured or ill worker have reviewed, understand and agree to the vocational rehabilitation plan; and

(ii) Sets forth the provider's and industrially injured or ill worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan.

The provider must use a ~~((form))~~ statement approved by, or substantially similar to a ~~((form))~~ statement used by, the department in order to document this agreement.

(3) Closing report. If the provider has to stop plan development before ~~((reaching a vocational goal))~~ a rehabilitation plan is submitted and/or approved, submit a plan development closing report. The report must

include:

(a) A list of the reasons the provider cannot proceed with vocational rehabilitation plan development activities; ~~((and))~~

(b) Supporting documentation, such as: Goals researched, job analyses developed, and/or labor market research conducted; and

(c) Address whether or not further vocational rehabilitation services may be necessary and likely to enable the injured worker to become employable.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-110 What are vocational rehabilitation plan implementation and monitoring services? Vocational rehabilitation plan implementation and monitoring services are those services a vocational rehabilitation provider provides to assist an industrially injured or ill worker to successfully complete a vocational rehabilitation plan. These services may include, but are not limited to, the following:

(1) Maintain sufficient contact with the industrially injured or ill worker, trainer and medical providers to make sure the worker ~~((is))~~ successfully ~~((progressing))~~ enters and progresses in the vocational rehabilitation plan;

(2) Confirm that the industrially injured or ill worker has received all necessary equipment and supplies;

(3) Contact the industrially injured or ill worker and trainer at least every thirty days to identify potential problems;

(4) Notify the department if the plan needs to be interrupted;

(5) Notify the department when the industrially injured or ill worker completes the plan;

(6) Monitor the industrially injured or ill worker's progress and resolve any problems that might arise or address by submitting supporting documentation regarding why it cannot be brought to resolution;

(7) Assisting in placement services prior to the completion of the vocational rehabilitation plan.

(8) Document the industrially injured or ill worker's acquisition of skills; and

~~((+8+))~~ (9) Notify the department if the plan needs to be terminated.

(10) Obtain preferred worker status for worker, if appropriate.

NEW SECTION

WAC 296-19A-125 What is the purpose of forensic services? The department may make a referral for forensic services to obtain an independent and objective evaluation of the vocational rehabilitation components of a complex claim. The department will only authorize a forensic evaluation when previous vocational referrals have not resolved an injured worker's vocational issues, except when necessary to make a determination regarding whether a deceased worker was totally and permanently disabled at the time of death. The forensic evaluation shall define what additional services, if any, are necessary and likely to enable an industrially injured or ill worker to become employable at gainful employment. A forensic evaluation shall also include collecting information relevant to making a vocational recommendation, according to the provisions in WAC 296-19A-130.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-130 What are the requirements for a forensic evaluation? ~~((Vocational forensic services are authorized to obtain the vocational rehabilitation provider's assistance in reviewing the claim file and making recommendations to resolve vocational issues. Except when necessary to make a determination regarding whether a deceased worker was totally and permanently disabled at the time of death, the department will only authorize a forensic evaluation when previous vocational referrals have not resolved an injured worker's vocational issues.~~

~~(1) The recommendations may include, but are not limited to:~~
~~(a) Vocational rehabilitation services are not appropriate. The vocational rehabilitation provider will provide the rationale for the recommendation.~~

~~(b) Vocational rehabilitation services are appropriate. The vocational rehabilitation provider will provide specific suggestions for the type of vocational rehabilitation services recommended.~~

~~(c) Able to work.~~

~~(d) Further clarification of medical or vocational issues is needed. The vocational rehabilitation provider will identify issues impacting the vocational rehabilitation process and requiring clarification.~~

~~(2) Covered services include, but are not limited to:~~

~~(a) Reviewing medical and vocational records;~~

~~(b) Identifying barriers to employment and possibilities for resolving the barriers;~~

~~(c) Coordinating with providers to obtain physical, mental and vocational capacities and restrictions;~~

~~(d) Identifying training needs and resources.~~

~~Vocational recommendations must follow department guidelines and have supporting documentation attached.))~~ (1) A forensic evaluation constitutes an analysis of prior vocational services and the medical conditions of an injured worker, including pre and post injury, to determine whether any further vocational services are necessary and likely to enable the injured worker to become employable at gainful employment. Services that may be

conducted in order to make a recommendation to the department may include, but are not limited to:

(a) Reviewing medical and vocational records;
(b) Obtaining, clarifying, and/or evaluating an industrially injured or ill worker's:

(i) Work and/or education history;
(ii) Skills, knowledge and aptitudes;
(iii) Physical capacities information related to the injury or other medical conditions;

(c) Identifying barriers to employment and possibilities for resolving the barriers;

(d) Identifying potential training needs and resources;
(e) Performing recommended services as needed to make a recommendation. These services may include conducting and writing job analyses, conducting labor market surveys, performing transferable skills analysis and performing occupational research.

(2) Recommendations must address the return to work priorities in RCW 51.32.095(2) and be documented by providing evidence of previous services and/or services performed under this referral.

(3) Development of a vocational rehabilitation plan is specifically precluded during a forensic evaluation.

(4) Any vocational provider that has provided any vocational rehabilitation services to the industrially injured or ill worker may not receive a referral for a forensic evaluation of that industrially injured or ill worker. Any vocational provider who begins a forensic evaluation cannot receive further vocational referrals for that worker.

NEW SECTION

WAC 296-19A-135 What reports does the department require when forensic services are provided? A forensic evaluation requires thirty-day progress report(s) and a final report.

(1) Progress reports. Each progress report must include:

(a) A detailed explanation why the forensic referral was not completed as of the date of the report;

(b) A summary of all activities taken in the past thirty days, including progress on previously recommended actions;

(c) Identification and analysis of any barriers preventing completion of the referral; and

(d) A description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

(2) Final report. The final report must include recommendations and a recommended outcome. The report must comprehensively evaluate the vocational and medical aspects of the claim so that the adjudicator can make an appropriate vocational decision. The vocational provider must designate an outcome in the closing report when the forensic evaluation is complete. The recommendations may include, but are not limited to:

(a) Able to work: The injured worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis. When this is not obtainable, medically approved physical capacities information supporting the worker's

ability to perform the job may be used; and

(iii) Labor market information supporting the provider's recommendation. Labor market information is not necessary when the injured worker is medically released to work for their job of injury at their previous work pattern.

(b) Further services appropriate: Vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment. The report must include:

(i) An analysis demonstrating how vocational rehabilitation plan development services are necessary and likely to enable the injured worker to become employable at gainful employment.

(ii) The specific return to work possibilities investigated and the reasons why they were ruled out, including labor market information when necessary.

(c) Further services not appropriate: The injured worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational services are not appropriate;

(ii) Identifying barriers that will make it unlikely the worker will benefit from vocational services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, labor market, and/or other information, as necessary, supporting the provider's recommendations.

(d) Return to work: The injured worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work;

(iv) The worker's monthly wages.

(e) Further clarification of medical issues is needed. The vocational rehabilitation provider will identify issues impacting the vocational rehabilitation process and requiring clarification.

NEW SECTION

WAC 296-19A-137 When can the department request a stand alone job analysis? The department can request a stand alone job analysis to analyze the requirements and characteristics of a job(s), an injured worker's ability to perform job functions and duties, and whether the injured worker requires further vocational rehabilitation services in order to become employable at gainful employment. Stand alone job analysis services are distinct services from any other referral type and may not be performed in conjunction with another referral for vocational rehabilitation services. A referral for a stand alone job analysis may be made at any time while the claim is open or in provisional status. The provider shall conduct an on-site job analysis whenever possible. Stand alone job analysis services must be completed and submitted to the department within fifteen calendar days of the referral assignment. The provider shall prepare a report addressing all elements set forth in WAC 296-19A-170.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-140 What information must a provider include in a labor market survey? (1) The following information must be included in a labor market survey(~~+~~

~~(a) The specific job title surveyed;~~
~~(b) If the provider completes a LMS on a referral, include a summary;~~
~~(c) Indicate in the summary whether the industrially injured or ill worker has the physical and mental/cognitive capacities to perform the job, based on either the industrially injured or ill worker's attending physician or the preponderance of medical information; and~~
~~(d) The LMS must note the name of the surveyor and list all employer contacts, positive and negative, and the dates of contact.~~

~~(2) A positive labor market exists if one of the following circumstances is present:~~

~~(a) If the provider performs a LMS to assess the industrially injured or ill worker's employability, it is considered positive if the LMS shows enough jobs suitable for that injured worker, consistent with WAC 296-19A-010(1); or~~

~~(b) If the provider performs a LMS for a vocational rehabilitation plan, it is considered positive if the LMS shows the proposed job goal, and jobs suitable for that injured worker, consistent with WAC 296-19A-010(1), exist in sufficient numbers to reasonably conclude that the worker will be employable at successful plan completion.~~

~~(3) The labor market survey report must include, or document attempts to obtain:)) that is submitted to the department as documentation in support of a vocational recommendation. This information must be presented in the form of a summary report and accompanied by the results of the individual employer contacts:~~

(a) The specific job title surveyed and its DOT code. If the DOT code is not an accurate reflection/description of the job, then list the specific job surveyed, the occupational code and the source from which the occupational code was obtained;

(b) The name of the surveyor;

(c) A summary of all contacts and the dates of contact;

(d) A summary of whether or not the industrially injured or ill worker has the physical and mental/cognitive capacities to perform the job, based upon information from the attending physician or from a preponderance of medical information;

(e) A summary of whether the labor market matches the industrially injured or ill worker's work pattern;

(f) A summary of whether the labor market is considered positive or negative, as follows:

(i) If the labor market survey is conducted during an ability to work assessment, a labor market is considered positive if it shows that there are sufficient job opportunities in the worker's relevant labor market to enable the injured worker to become employable.

(ii) If the labor market is conducted during a plan development, a labor market is considered positive if it shows that jobs suitable for the injured worker for the proposed job goal exist in sufficient numbers to reasonably conclude that the worker will be employable at plan completion.

(g) Additional information may be presented in the summary, but only as a supplement to the labor market survey. Additional information may include,

but is not limited to, published statistical data regarding occupations and projected job openings.

(2) The following information must be obtained from the individual employer contacts and submitted to the department with the summary report. If the information is not available, the VRC should document attempts made to obtain the information and why it was not available.

(a) The specific job title surveyed;

(b) All specific employer contacts, including their firm names, phone numbers, contact name and job title;

(c) Physical and mental/cognitive demands of the job in relation to the industrially injured or ill worker's physical and mental/cognitive capacities;

(d) Minimum hiring requirements and the skills and training commonly and currently necessary to be gainfully employed in the job;

(e) Work patterns;

(f) Number of positions per job title;

(g) Wage;

(h) Date of last hire;

(i) Number of current openings; and

(j) ~~((A summary of the labor market survey results and whether the survey is))~~ An indication of whether each contact was considered positive or negative. The provider must include specific documentation to support why a contact was positive or negative for the recommended occupation or proposed vocational goal.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-170 What information must a provider include in a job analysis? When completing a job analysis, the vocational rehabilitation provider must:

(1) Include identifying information on each page. This information includes the worker's name and claim number, and ~~((job title and DOT number))~~ the specific job title surveyed and its DOT code. If the DOT code is not an accurate reflection/description of the job, then list the specific job surveyed, the occupational code and the source from which the occupational code was obtained;

(2) Note the name of the vocational rehabilitation provider who completed the job analysis, where the provider completed the job analysis and the date of the job analysis. If the analysis is ~~((done on site))~~ based on site specific information, include the employer name and employer contact person(s) name(s) with phone number(s);

(3) Describe the essential functions and all other tasks required to perform the job. Essential job functions are the basic, necessary, and integral parts of a job performed by a worker;

(4) List the tools and equipment required to do the job;

(5) Evaluate and describe the ~~((competencies))~~ skills required to perform the job;

(6) Evaluate and describe the physical demands and their frequency required to perform the job~~((This must include demands for sitting, standing, lifting, etc))~~, utilizing the physical demands listing consistent with the DOT. If the DOT does not represent an accurate reflection/description of the job, then list the specific job surveyed, the physical demands and the source from which the physical demands listing was obtained. The vocational rehabilitation provider should pay special

attention to any job duties and physical demands that may be affected by the industrially injured or ill worker's condition;

(7) Describe, if pertinent, any environmental hazards encountered on the job;

(8) Describe possible modifications to the job for employer job offers or job modifications;

(9) A section for medical approval, signature, and comments; and

(10) The signature of the vocational rehabilitation provider presenting the job analysis for review and date signed.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-180 What ~~((job modification assistance benefits are available))~~ are the requirements for job modifications? As provided for in section 13, chapter 63, Laws of 1982 (RCW 51.32.250), the supervisor or supervisor's designee in his or her discretion may pay job modification costs. The injured worker's attending physician must certify that the job modification is medically necessary due to restrictions imposed by the accepted industrial injury or condition and that the proposed job modification will meet the injured worker's needs. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund. Any equipment and/or appliances purchased for a job modification remain the property of the department until the injured worker successfully completes the return to work activity. Once the return to work activity is successfully completed, the equipment will be owned and maintained by the parties designated in the ownership agreement. Unless the equipment is covered by warranty, the owner is responsible for repair or replacement if the equipment wears out or needs repair.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-190 How much is available for job modification assistance? An amount not to exceed five thousand dollars from the department is available per worker per ~~((modification))~~ job or job site. If combined with prejob accommodations for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is five thousand dollars. The employer may add to this amount with its own contribution.

NEW SECTION

WAC 296-19A-191 What prejob accommodations are available? As provided for in RCW 51.32.095(4), the supervisor or the supervisor's designee may, in his or her sole discretion, authorize prejob accommodation costs.

NEW SECTION

WAC 296-19A-192 How much is available for prejob accommodations? An amount not to exceed five thousand dollars from the department is available per worker per claim. If combined with job modifications for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is five thousand dollars. Any equipment and/or appliances purchased for a prejob accommodation remains the property of the department until the injured worker has been released for work or has successfully completed the retraining plan. Once the injured worker has been released to work or has successfully completed the retraining plan, the injured worker retains the equipment and/or appliances according to the signed ownership agreement. Unless the equipment is covered by warranty, the owner is responsible for repair or replacement if the equipment wears out or needs repair.

NEW SECTION

WAC 296-19A-193 What are the requirements for prejob accommodations? Prejob accommodations may only be authorized in the following circumstances:

(1) The prejob accommodation is medically necessary to enable the industrially injured or ill worker to participate in an approved retraining program; or

(2) The prejob accommodation is necessary to enable the industrially injured or ill worker to perform the essential functions of a job or a return to work goal in which the injured worker is seeking employment consistent with:

(a) A completed retraining plan; or

(b) The recommendations of an ability to work assessment. The injured worker's attending physician must certify that the prejob accommodation is medically necessary due to restrictions imposed by the accepted industrial injury or condition and that the proposed prejob accommodation will meet the injured worker's needs.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-200 How does an employer apply for job modification assistance? (1) An employer requesting job modification assistance must submit to the department a job modification assistance application. A vocational provider may assist the employer with the application.

(2) The job modification assistance application shall include, but not be limited to:

(a) A document supporting the need for job modification;

(b) A description of the job modification; and

(c) An itemized account of each expense to be incurred in the job

modification. Job modification assistance applications shall be submitted on a form prescribed by the department.

(3) The supervisor or supervisor's designee shall accept, reject or modify the job modification application within thirty days of receipt. Notification of the supervisor's acceptance, rejection, or modification shall be in writing.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 12/1/00)

WAC 296-19A-210 What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers? Provider community commentary, expert opinion and best practices suggest that there is a correlation between a higher quality level of vocational rehabilitation services and higher qualifications of vocational rehabilitation providers. To ensure the provision of the highest possible quality of vocational rehabilitation services, the department shall only issue a provider number to persons, firms, partnerships, corporations, and other legal entities that meet the following qualification requirements:

(1) Vocational rehabilitation counselor (VRC).

(a) VRCs not registered with the department and applying for a provider number with the department effective on or after December 1, 2000, must meet the following minimum qualifications:

Education Masters Degree	Experience 1 year full-time industrial insurance experience	Certification and CRC or CDMS or ABVE
OR		
Bachelors Degree	2 years full-time industrial insurance experience	and CRC or CDMS

CRC = Certified Rehabilitation Counselor

CDMS = Certified Disability Management Specialist

ABVE = American Board of Vocational Experts

(b) VRCs registered with the department prior to December 1, 2000, will be required to ~~((apply for a provider number and will be given six years from December 1, 2000, to meet the above requirements))~~ meet the qualification criteria in (a) of this subsection no later than November 30, 2010.

(2) VRC supervisor.

(a) In order to supervise interns providing vocational rehabilitation services to industrially injured or ill workers beginning on or after December 1, 2000, the VRC(~~(=)~~)supervisor must provide proof of five years full-time experience working with Washington state injured workers. The VRC supervisor must meet all of the qualification requirements in subsection (1) of this section.

(b) Supervisors registered with the department prior to December 1, 2000, will be required to ~~((apply for a provider number and will be given six years from December 1, 2000, to meet all VRC/supervisor requirements))~~ meet the qualification criteria in (a) of this subsection no later than November 30, 2010.

(c) The VRC supervisor is responsible for ensuring that all work

performed by an intern for the department or self-insurer conforms with Title 51 RCW, department rules and department policies.

(3) Forensic services--In order to provide forensic services to the department (~~on claims other than those for which the VRC provided the vocational rehabilitation services~~), a VRC must provide proof of ~~((three))~~ five years full-time experience working with Washington state industrially injured or ill workers, and must possess a CRC or ABVE certification.

(4) Intern.

(a) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must meet the following minimum qualifications:

Degree	Internship Length
Masters Degree in field acceptable to CRC or CDMS or ABVE	Equal to required experience to obtain CRC or CDMS or ABVE certification including at least 1 year working with industrially injured or ill workers.
OR	
Bachelors Degree in field acceptable by CDMS	Equal to required experience to obtain CDMS certification including at least 2 years working with industrially injured or ill workers.

(b) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must obtain one of the required VRC certifications within one year of completing their required internship. Interns will remain in internship status during this time frame.

(c) Interns registered with the department prior to December 1, 2000, will be required to apply for a provider number with the department and may work as an intern until the end of their current internship. Upon completion of the internship the intern may submit an application to the department as a VRC. These providers must obtain one of the required VRC certifications by November 30, 2006.

(d) All interns are required to conform to Title 51 RCW, department rules, and department policies. All interns granted a provider number by the department must be supervised by a VRC supervisor.

~~((+5+))~~ (e) No person shall serve as an intern under these rules for more than sixty months of full-time experience, or its equivalent, working with industrially injured or ill workers. The intern must notify the department when there is a change in the status of an internship.

(5) Interns may not receive referrals directly from the department or self-insured employers. Interns may perform aspects of vocational rehabilitation services under the supervision of a VRC supervisor. The VRC assigned to the referral must review and attest to all work performed by an intern on that referral.

(6) Providers who receive or are assigned referrals must comply with all electronic security requirements in place for accessing department files.

(7) Providers registered with the department prior to December 1, 2000, who do not meet the above qualification requirements within the six-year period will no longer be eligible to provide vocational rehabilitation services to industrially injured or ill workers and the department will terminate their provider number(s).

~~((+6+))~~ (8) Business requirements.

(a) Providers must comply with all federal and state laws, regulations and other requirements with regard to business operations. In order to be eligible to receive referrals from the department, providers must satisfy the

requirements set forth in this subsection in every service location in which they wish to operate.

(b) Providers must be covered by general liability insurance, automobile liability insurance, errors and omission insurance, malpractice insurance, and industrial insurance if required by Title 51 RCW.

(c) Providers must have services and facilities that provide injured workers a private and professionally suitable location in which to discuss vocational rehabilitation services issues. In order to be eligible to receive referrals from the department, providers must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(d) Providers must have telephone-answering capability during regular business hours, Monday through Friday. In order to be eligible to receive referrals from the department, providers must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(e) In order to receive referrals made by the department, providers must maintain or have access to equipment that can utilize the department's remote access system for transmitting vocational referrals.

~~((47))~~ (9) The department may assign a provider number to a vocational rehabilitation firm, partnership, corporation or other legal entity so long as substantial control over the daily management of the vocational rehabilitation firm, partnership, corporation or other legal entity is performed by a VRC that satisfies the qualifications set forth in this rule.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-240 What authority does the department have to audit vocational rehabilitation providers? ~~((41))~~ The department has the authority to:

~~((a))~~ (1) Conduct audits of a provider, either for cause or at random;

~~((b))~~ (2) Conduct audits at a provider's place of business using copies and originals of all files and records maintained by the provider;

~~((c))~~ (3) Conduct audits away from a provider's place of business, using copies of all files and records supplied by the provider;

~~((d))~~ (4) Require a provider to submit legible copies of all files and records requested for audit;

~~((e))~~ (5) When the department requires the provider to submit copies of records and files to the department, the provider shall submit the requested material within thirty calendar days of the request;

(6) Inspect and audit all of the provider's vocational rehabilitation files and records relating to services delivered under Title 51 RCW;

~~((f))~~ (7) Inspect and audit a provider's documentation supporting charges billed for vocational rehabilitation services delivered.

~~((2) For information regarding the formal appeals process refer to chapter 51.52 RCW.))~~

NEW SECTION

WAC 296-19A-245 What is the department's formal appeal process? For information regarding the formal appeals process refer to chapter 51.52 RCW.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-260 What are the possible consequences for a provider that does not comply with the RCWs, WACs, or department policies? The department may order corrective action(s) when it determines that a provider is not in compliance with department statute, rule, or written department policy. Possible corrective actions include, but are not limited to:

- (1) Submission and implementation of a written corrective action by the provider showing how the provider will come into compliance;
- (2) Recoupment of payments, plus interest, made to the provider;
- (3) Requirement that the provider satisfactorily complete remedial education courses and/or other educational or training programs;
- (4) Suspension or termination of ~~((the))~~ a provider's provider number and ability to receive payment for vocational rehabilitation services rendered to industrially injured or ill workers under the Industrial Insurance Act;
- (5) Rejection of a provider's application to provide vocational rehabilitation services to industrially injured or ill workers under the Industrial Insurance Act;
- (6) Denial or rejection of a request for payment submitted by or on behalf of the provider;
- (7) Placement of the provider on prepayment review status requiring the submission of supporting documents prior to payment;
- (8) Assessment of penalties.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-270 In what situation(s) can the department take corrective action(s)? (1) Reasons the department can order corrective actions against a vocational rehabilitation provider include, but are not limited to, the following:

- (a) Failure to take reasonable and necessary steps under this chapter to ensure a successful completion of a referral;
- (b) Charging the department for services that do not contribute to the completion of a vocational referral, including, but not limited to:
 - (i) Preparation and submission of job analyses during plan development for jobs that are beyond the worker's documented or expected capacities and physical abilities as demonstrated by the medical information in the file at the time the job analysis was performed;
 - (ii) Preparation and submission of job analyses or labor market surveys

during early intervention or assessment that are not supported by the injured worker's education, work history and/or transferable skills as demonstrated by the information in the file at the time the job analysis and/or labor market survey was performed;

(iii) Hand delivery of records when other less expensive means of delivery are reasonably appropriate and available;

(c) Commission of an act involving moral turpitude, dishonesty, or corruption relating to the provision of vocational rehabilitation services whether the act constitutes a crime or not;

~~((b))~~ (d) Misrepresentation or concealment of a material fact in obtaining a department provider number, or in response to any request for information about service delivery made by the department;

~~((e))~~ (e) Provision of vocational rehabilitation services without having a department provider number;

~~((d))~~ (f) Use of persons that do not possess a department provider number to deliver vocational rehabilitation services;

~~((e))~~ (g) Operation of a vocational firm, partnership, corporation, or other legal entity in violation of the business requirements set forth in RCW, WAC, or written department policy;

~~((f))~~ (h) Use of false, fraudulent, or misleading advertising;

~~((g))~~ (i) Commission of any incompetent or negligent action which presents the significant risk of resulting in harm to an industrially injured or ill worker, the referral source, or an employer;

~~((h))~~ (j) Submission of a false or misleading report or document as part of delivering vocational rehabilitation services;

~~((i))~~ (k) Failure to supervise a vocational rehabilitation intern in accordance with RCW, WAC, or written department policy;

~~((j))~~ (l) Failure to comply with any order issued by the department;

~~((k))~~ (m) Disclosure of confidential information on vocational rehabilitation services to a person who is not entitled to it;

~~((l))~~ (n) Unauthorized disclosure of confidential claim information, including, but not limited to, private health care information;

(o) Charges an industrially injured or ill worker or employer a fee for delivering vocational rehabilitation services on a referral from the referral source; and

~~((m))~~ (p) Bills an industrially injured or ill worker or state fund employer for providing services under the Industrial Insurance Act.

(2) The department can take corrective action(s) for other violations of RCW, WAC, or written department policy not specifically mentioned above.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-300 How does the department evaluate performance when a vocational rehabilitation provider does not have either a performance rating with the department or previous experience delivering services to Washington injured workers? (1) Several situations exist in which a vocational rehabilitation provider may not have a performance rating with the department or may not have sufficient experience with Washington industrially injured or ill workers covered by the department to establish a performance rating.

(2) Provider community commentary, expert opinion and best practices suggest that there is a correlation between a higher level of vocational rehabilitation services and higher qualifications of vocational rehabilitation providers. Based upon this information, the department concludes that referrals to providers who satisfy these minimum qualification

criteria set forth in WAC 296-19A-210 (1)(a) (~~and (2)(a)~~), but who do not have a performance rating with the department, may be appropriate. The department will ensure that these providers are complying with department statutes, rules, and policies and furnishing a high level of service through close and continued monitoring. The department may consider making referrals to vocational rehabilitation providers, on a trial basis, for whom the department does not have performance rating data, under the following circumstances:

(a) The provider fulfills the qualification requirements set forth in WAC 296-19A-210 (1)(a) (~~(, (2)(a))~~); and

(b) The department may consider making referrals sufficient to develop a reliable performance rating.

(3) If the department elects to refer and monitor a limited number of cases to the provider(s) in order to evaluate a provider's performance and develop performance rating, the department makes no guarantee of future referrals to the provider.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-350 What are the requirements for case notes? Vocational rehabilitation providers must maintain case notes. Case notes must:

(1) Include the first and last name of the industrially injured or ill worker being served and the worker's claim number at the top of each page;

(2) Include the first and last name of the vocational rehabilitation provider providing each service documented on each page;

(3) Be kept in a claimant file corresponding to the reports, medical information, correspondence, and other materials that they provide documentation for;

(4) Testing and other records with special confidentiality requirements may be kept in separate files;

(5) Be legible;

(6) Be in chronological order;

(7) Record the date each service was provided month month/day day/year year;

(8) For providers who bill for vocational services, include the amount of time, recorded in tenths of an hour, required to provide each service;

(9) Describe each service sufficiently to allow the referral source to verify the purpose, level, type, and outcome of each service provided and substantiate the charges billed for them.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-400 What records are vocational rehabilitation providers required to maintain? (1) A vocational rehabilitation provider must maintain adequate documentation in claimant-specific files to verify the level, type, and extent of the vocational rehabilitation services provided to and on behalf of industrially injured or ill workers.

(2) A vocational rehabilitation provider who requests payment from the referral source for vocational rehabilitation services must maintain all records necessary for the director's authorized auditors to audit the

provision of services. Providers need to keep all records necessary to disclose the specific nature and extent of all services provided for an industrially injured or ill worker, along with the amounts billed to the department, for those services. Paper copies of records must be maintained for audit purposes for a minimum of five years from the date of closure by the provider.

VOCATIONAL DISPUTES

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-440 What elements of a vocational determination may be disputed? (1) A finding that an industrially injured or ill worker is eligible for vocational rehabilitation services, or a finding that he or she is ineligible for vocational rehabilitation services, may be disputed.

(2) An approved vocational rehabilitation plan may also be disputed.

(3) An approved plan modification may also be disputed.

(4) A previously approved vocational rehabilitation plan may not be disputed through a plan modification dispute process.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-480 When must providers comply with these rules? (1) The amendments to the following section of chapter 296-19A WAC becomes effective on ~~((December 1, 2000:~~

~~WAC 296-19A-210 What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers?~~

~~(2) The following sections of chapter 296-15 WAC become effective on December 1, 2000:~~

~~(a) WAC 296-15-500 What vocational rehabilitation reports are required for self insured employers?~~

~~(b) WAC 296-15-510 What is the process used for vocational rehabilitation with regard to self insured employers?~~

~~(3) All remaining sections of chapter 296-19A WAC become effective on June 1, 2001.)) May 1, 2003:~~

~~(a) WAC 296-19A-210;~~

~~(b) WAC 296-19A-137.~~

(2) All other amendments to chapter 296-19A WAC become effective January 1, 2004.

(3) All remaining sections of chapter 296-19A WAC shall remain in full force and effect.